

**IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON**

**STATE OF WASHINGTON,**

**No. 27316-4-III**

**Respondent,**

**Division Three**

**v.**

**FELIX R. COLON,**

**UNPUBLISHED OPINION**

**Appellant.**

Schultheis, C.J. — A jury found Felix Colon guilty of one count of unlawful possession of a controlled substance (methamphetamine). On appeal, he challenges the sufficiency of the evidence supporting the jury verdict. He also raises two additional grounds in his statement of additional grounds (SAG). We affirm.

**FACTS**

On May 30, 2007, at 12:55 p.m., police officers and Detective Kelly Justice went to Mr. Colon's residence. Detective Justice attempted to contact Mr. Colon but no one answered the door. Police officers secured the residence for over three hours while Detective Justice obtained a search warrant.

After securing the warrant, officers attempted to enter through Mr. Colon's front door. However, Mr. Colon and the other occupants had barricaded themselves inside the residence. Officers obtained a key to a rear door and entered a 15-by-10-foot mudroom. No one was present in the room. Officers searched the area and found business receipts in Mr. Colon's name. Five to eight feet away from Mr. Colon's receipts, officers found a scale, pipes, and 1.5 grams of methamphetamine in a trash can.

Officers next pried open a back door to the main part of the house. When officers entered, they found Mr. Colon and two other people inside. A search of the main residence did not yield any controlled substances.

Detective Justice remained outside Mr. Colon's residence while entry was made. When the detective questioned Mr. Colon about the methamphetamine, Mr. Colon accused the detective and the other officers of planting the drugs.

The State charged Mr. Colon with unlawful possession of a controlled substance under RCW 69.50.4013(1). A jury convicted Mr. Colon as charged. Mr. Colon appeals.

#### ANALYSIS

Mr. Colon challenges the sufficiency of the evidence supporting his conviction for unlawful possession of methamphetamine. Evidence is sufficient to support a conviction if, after viewing the evidence in the light most favorable to the State, any rational trier of fact could have found guilt beyond a reasonable doubt. *State v. Green*, 94 Wn.2d 216,

220-22, 616 P.2d 628 (1980). A claim of insufficiency admits the truth of the State's evidence and all inferences that reasonably can be drawn from that evidence. *State v. Salinas*, 119 Wn.2d 192, 201, 829 P.2d 1068 (1992).

Possessing a controlled substance is unlawful under RCW 69.50.4013.<sup>1</sup> Methamphetamine is a controlled substance. RCW 69.50.206(d)(2). Possession of a controlled substance may be either actual or constructive. *State v. Mathews*, 4 Wn. App. 653, 656, 484 P.2d 942 (1971); *State v. Callahan*, 77 Wn.2d 27, 459 P.2d 400 (1969). Mr. Colon was not in actual physical possession of the controlled substance when arrested. Therefore, we evaluate whether his possession was constructive.

Constructive possession occurs when a person has dominion and control over the controlled substance. *Mathews*, 4 Wn. App. at 656. We look to the totality of the situation to determine if substantial evidence exists that tends to establish circumstances from which any trier of fact could reasonably infer that the defendant had dominion and control over the area in question and the drugs found there. *State v. Partin*, 88 Wn.2d 899, 906, 567 P.2d 1136 (1977).

Relying on *State v. Shumaker*, 142 Wn. App. 330, 174 P.3d 1214 (2007), Mr.

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<sup>1</sup> RCW 69.50.4013(1) states:

It is unlawful for any person to possess a controlled substance unless the substance was obtained directly from, or pursuant to, a valid prescription or order of a practitioner while acting in the course of his or her professional practice, or except as otherwise authorized by this chapter.

Colon argues that evidence of his dominion and control over the premises is insufficient to establish that he had dominion and control of the methamphetamine. However, his reliance on *Shumaker* is misplaced. In *Shumaker*, the issue was whether the court’s instructions to the jury were wrong because the jury could find the defendant guilty based solely on dominion and control over the premises rather than the drugs. *Id.* at 333. We concluded that the instruction was erroneous, noting that dominion and control over the premises does not establish constructive possession of contraband found on the premises—rather, it “is only one of the circumstances from which constructive possession can be inferred by the jury.” *Id.* at 334.

Here, there is no claim that the jury was improperly instructed. Rather, Mr. Colon contends the evidence is insufficient because the State has shown dominion and control only over the premises, not the drugs. However, in *State v. Cantabrana*, 83 Wn. App. 204, 208, 921 P.2d 572 (1996), Division One of this court noted the distinction between instructional error and claims of insufficient evidence:

When the sufficiency of the evidence is challenged on the basis that the State has shown dominion and control only over premises, and not over drugs, courts correctly say that the evidence is sufficient because dominion and control over premises raises a rebuttable inference of dominion and control over the drugs.

Here, the totality of the circumstances supports the jury’s conclusion that Mr. Colon had dominion and control over the methamphetamine. The evidence was

undisputed that Mr. Colon had dominion and control over the area where the methamphetamine was found. This, in turn, raised a rebuttable inference of dominion and control over the drugs. The drugs were found within five to eight feet of receipts belonging to Mr. Colon. And when police arrived at Mr. Colon's residence, he barricaded himself inside for several hours until police pried open the door.

Viewing these facts in favor of the State, any rational trier of fact could find beyond a reasonable doubt that Mr. Colon possessed a controlled substance. Accordingly, Mr. Colon's sufficiency of the evidence challenge fails.

Finally, in his SAG, Mr. Colon writes that he "was not in the 'mud room' where [the] methamphetamine was allegedly found. He was in the apartment next door; where there was nothing (Drugs or stolen property) illegal." In his second additional ground, Mr. Colon writes, "There was nobody in the mud room where the crystalline material was found. Only the police officers."

These statements do not adequately apprise us of the issues for review. Furthermore, Mr. Colon does not cite to the record or case law in support of his additional grounds. While the SAG need not contain references to the record or legal citation, it will not be considered "if it does not inform the court of the nature and occurrence of alleged errors." RAP 10.10(c). Mr. Colon's grounds are not sufficiently developed to allow review. Therefore, we decline to address them.

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Sufficient evidence supports Mr. Colon's conviction. We therefore affirm.

A majority of the panel has determined that this opinion will not be printed in the Washington Appellate Reports but it will be filed for public record pursuant to RCW 2.06.040.

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Schultheis, C.J.

WE CONCUR:

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Sweeney, J.

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Brown, J.